

**UNITED STATES BANKRUPTCY COURT**  
*for the*  
**NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES COURTHOUSE AND FEDERAL BUILDING  
280 SOUTH FIRST STREET, ROOM 3035  
SAN JOSE, CALIFORNIA 95113-3099

MARILYN MORGAN  
UNITED STATES BANKRUPTCY JUDGE

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**ASSUMPTIONS APPLICABLE TO ORDERS FOR RELIEF FROM STAY**  
**HONORABLE MARILYN MORGAN**

Unless an order specifically and unambiguously provides to the contrary, the following assumptions are made by the court in every order on a relief from stay motion:

1. Continued Hearings - Stay Remains in Effect. Where the preliminary hearing is continued for either a further preliminary hearing or a final hearing, the automatic stay remains in effect pending such further hearing.
2. Ex Parte Orders Following Default. Where an adequate protection order provides for a future order terminating the automatic stay to be obtained on an ex parte basis upon the default or uncured default of the debtor, a request for the future order will only be considered by the court when it is accompanied by a proof of service of the declaration regarding default and proposed order on the debtor and the debtor's counsel. A copy of the adequate protection order must be attached to the declaration regarding default. If unaccompanied by a proof of service, the proposed order will not be signed.
3. Time to Cure Default. Where the court's adequate protection order establishes a procedure for the curing of a future default after notice to the debtor and the debtor's counsel, the time to cure (for example, ten days) shall be calculated pursuant to Federal Rule of Bankruptcy Procedure 9006. The first day shall be the day following the day when the notice is mailed.
4. Automatic Termination in Future. Where an adequate protection order provides that the automatic stay is to terminate in the event of a future default, or a default which is not cured within a specified time, and that such termination is to occur without further hearing or order by the court, the order providing for automatic termination in the future must contain a clear statement that upon default, or uncured default, the automatic stay will terminate "without further hearing or order by the court" and specify the general nature of the action which the secured party may take without further hearing or order of the court.
5. Relief to Pursue Insurance Coverage. Where the automatic stay is modified to pursue an action covered by insurance, the stay remains in effect to prohibit execution upon any judgment obtained against the debtor or property of the estate without further order of the court. The stay does not prohibit the obtaining of the judgment in excess of insurance coverage or the filing of a proof of claim.

6. Attorneys' Fees. Unless a specific ruling is made by the Court at the time of a hearing, attorneys' fees which may be claimed under 11 U.S.C. § 506 are subject to subsequent objection as to reasonableness.

7. Trustees. Any order for relief will only be effective against parties who were served with the original motion. If a trustee was not served with a motion, the trustee will not be bound by the terms of the order for relief.

8. Real Property - Continuing Trustee's Sales. Where a trustee's sale has been noticed prior to the filing of a bankruptcy petition, such sale may be continued under California law or the laws of the state where the real property is located.

9. Real Property - Noticing Trustee's Sales. Where the Court modifies the automatic stay to allow a creditor secured by real property to record and publish a notice of default, and the stay remains in effect to prohibit a trustee's sale without further hearing and order of the Court, the recording and publishing of a notice of trustee's sale is also prohibited without such further order.

10. Real Property - Adequate Protection Payments. Where adequate protection payments are made to a creditor secured by real property, and the secured creditor has previously recorded and published a notice of default or notice of trustee's sale, the secured creditor may accept the adequate protection payments. Receipt of payments shall not invalidate the notice of default or notice of trustee's sale previously recorded.

11. Real Property - Civil Code § 2924(g). Where the Court establishes a future date for the termination of the automatic stay, a "drop dead" date, the seven day waiting period provided for in California Civil Code § 2924(g) will be considered waived provided that the written order on the motion contains a specific reference to the waiver of such section.

#### **SIGNING OF ORDERS**

Unless otherwise specified at the time of the hearing, proposed orders shall be submitted in accordance with B.L.R. 9015. Orders not lodged are normally processed and returned within three business days following submission.